

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010090436

ORDER PARTIALLY GRANTING  
MOTION FOR STAY PUT

On September 10, 2010, Student filed a motion for stay put at Mar Vista Elementary School, Fifth Grade SDC. On September 17, 2010, District filed an opposition.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); 56505, subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

In *Van Scoy, supra*, the Court acknowledged that the stay-put provision of IDEA entitles a student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account changed circumstances. In that

case, the Student was transitioning from kindergarten to first grade. Student spent fewer hours in kindergarten in the classroom and more hours outside of the classroom with related services, than he would have in the first grade. Those additional out of class hours were the issue in the stay-put context. The Court determined that Student's stay-put required inclusion of the additional services outside the classroom in conjunction with advancement to the first grade in order to avoid a significant change in the stay-put placement

## DISCUSSION

Student is 11 years old receiving special education services based on a diagnosis of mental retardation. For the 2009/2010 school year, his placement had been a Fifth grade Special Day Class (SDC) at Mar Vista Elementary School. In June, he matriculated from elementary school. District offered placement in a Sixth grade SDC, at Palms Middle School. Student seeks stay put placement and retention in the same Fifth Grade SDC.

Student's December 16, 2009 Individualized Education Program (IEP) is the last agreed upon, implemented IEP. It noted IEP team discussions about Student's transition to Middle School on pages 32 and 33. The IEP team did not recommend that Student be retained in Elementary School. His SDC teacher recommended Student receive Community Based Instruction in Middle School so he could learn functional life skills. The IEP team agreed to hold another IEP in the Spring to discuss his transition to middle school. That June 9, 2010 transition IEP recommended an SDC class in Middle School, but Student's parents' disagreed and this IEP is the subject of the due process hearing.

Student cites *Kevin T. V. Elmhurst Community School District*, 34 IDELR 202 (N.D. Ill. 2001) to support his contention that advancement from elementary school to middle school is comparable to graduation from high school, and therefore advancement is a violation of FAPE. However, this case is distinguishable. *Kevin T.* held that in order to graduate, students with disabilities, must not only have completed credits required for graduation, but must also have received adequate vocational and transition services, and achieved their IEP goals and objectives if some of their basic skills were not in place. In this case, Student is not graduating from high school and thus exiting the special education system. Student's advancement to Middle School will result in the continuation, not the termination of her education and services. Therefore, *Kevin T.* is not analogous or controlling.

Student's advancement to Sixth Grade (Middle School) is his stay put placement because he completed Fifth Grade (Elementary School). In accordance with *Van Scoy*, this change of circumstances means that Student's stay put placement is a grade-level equivalent placement, even if that Sixth Grade placement is in a different location, a Middle School. The last implemented, agreed upon IEP of December 19, 2009 notes how the IEP team discussed, contemplated and agreed to Student's transition to Middle School, not retention in Elementary School. The June 9, 2010 IEP also recommended the SDC class in Middle School. The status quo can be preserved, even if Student matriculates to sixth grade with the same supports and services as provided for the last agreed-upon IEP.

## ORDER

Student's motion for stay-put is partially granted. Student's stay-put shall be as provided in the December 19, 2009 IEP, with the exception that District may advance Student to the sixth grade pending resolution of this matter

Dated: September 23, 2010

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings